

ASSEMBLY BILL

No. 1678

Introduced by Assembly Member Gordon

February 12, 2014

An act to amend Sections 8281, 8282, 8283, 8284, 8285, and 8286 of, and to amend the heading of Article 5 (commencing with Section 8281) of Chapter 7 of Division 4 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1678, as introduced, Gordon. Women, minority, disabled veteran, and LGBT business enterprise procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical, gas, water, and telephone corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature.

Existing law directs the commission to require every electrical, gas, water, wireless telecommunications service provider, and telephone corporation with annual gross revenues exceeding \$25,000,000, and their regulated subsidiaries and affiliates, to implement a program developed by the commission to encourage, recruit, and utilize minority-, women-, and disabled veteran-owned business enterprises, as defined, in the procurement of contracts from those corporations or from their regulated subsidiaries and affiliates, and to require the reporting of certain information. The commission, by its rulemaking authority, has adopted General Order 156, applicable to certain electrical, gas, and telephone corporations, to effectuate these requirements. Existing law includes the declaration by the Legislature that each electrical, gas,

water, wireless telecommunications service provider, and telephone corporation that is not required to submit a plan, and each cable television corporation and direct broadcast satellite provider, is encouraged to voluntarily adopt a plan for increasing women, minority, and disabled veteran business enterprise procurement in all categories. Existing law requires the commission, by rule or order, to adopt criteria for verifying and determining eligibility of women and minority business enterprises for procurement contracts. Existing law requires the commission to provide to the Legislature a specified report on the progress of activities undertaken by certain entities in the implementation of women, minority, and disabled business enterprise development programs. Existing law requires the commission to recommend a program and legislation for carrying out the policy of aiding the interests of women, minority, and disabled veteran business enterprises.

This bill would extend these provisions to LGBT business enterprises, as defined.

(2) Under existing law, a violation of any provision of any rules or orders of the commission is a crime. In addition, any person or corporation who falsely represents a business as a women, minority, or disabled veteran business enterprise for the purposes of the program discussed above is subject to criminal penalties.

This bill would also subject any person or corporation who falsely represents a business as an LGBT business enterprise for the purposes of the program discussed above to criminal penalties. Because a violation of the requirements of the bill would be a crime under those provisions, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The heading of Article 5 (commencing with
- 2 Section 8281) of Chapter 7 of Division 4 of the Public Utilities
- 3 Code is amended to read:

Article 5. Women, Minority,~~and Disabled-Veteran~~ *Veteran*,
and LGBT Business Enterprises

SEC. 2. Section 8281 of the Public Utilities Code is amended
to read:

8281. (a) The Legislature hereby finds and declares that the
essence of the American economic system of private enterprise is
free, open, and transparent competition. Only through free, open,
and transparent competition can free markets, reasonable and just
prices, free entry into business, and opportunities for the expression
and growth of personal initiative and individual judgment be
ensured. The preservation and expansion of that competition are
basic to the economic well-being of this state and that well-being
cannot be realized unless the actual and potential capacity of
women, minority,~~and disabled-veteran~~ *veteran*, *and LGBT* business
enterprises is encouraged and developed. Therefore, it is the
declared policy of the state to aid the interests of women, minority,
~~and disabled-veteran~~ *veteran*, *and LGBT* business enterprises in
order to preserve reasonable and just prices and a free competitive
enterprise, to ensure that a fair proportion of the total purchases
and contracts or subcontracts for commodities, supplies,
technology, property, and services for regulated public utilities,
including, but not limited to, renewable energy, wireless
telecommunications, broadband, smart grid, and rail projects, are
awarded to women, minority,~~and disabled-veteran~~ *veteran*, *and*
LGBT business enterprises, and to maintain and strengthen the
overall economy of the state.

(b) (1) The Legislature finds all of the following:

(A) The opportunity for full participation in our free enterprise
system by women, minority,~~and disabled-veteran~~ *veteran*, *and*
LGBT business enterprises is essential if this state is to attain social
and economic equality for those businesses and improve the
functioning of the state economy.

(B) Public agencies and some regulated utilities that have
established short- and long-range women, minority,~~and disabled~~
~~veteran~~ *veteran*, *and LGBT* business enterprise goals are awarding
30 percent or more of their contracts to these business enterprises.

(C) Women, minority,~~and disabled-veteran~~ *veteran*, *and LGBT*
business enterprises have traditionally received less than a
proportionate share of regulated public utility procurement

1 contracts, especially in renewable energy, wireless
2 telecommunications, broadband, smart grid, and rail projects.

3 (D) It is in the state's interest to expeditiously improve the
4 economically disadvantaged position of women, minority, ~~and~~
5 ~~disabled-veteran~~ *veteran, and LGBT* business enterprises.

6 (E) The position of these businesses can be substantially
7 improved by providing long-range substantial goals for
8 procurement by regulated public utilities of technology, equipment,
9 supplies, services, materials, and construction work, especially in
10 renewable energy, wireless telecommunications, broadband, smart
11 grid, and rail projects, from women, minority, ~~and disabled-veteran~~
12 *veteran, and LGBT* businesses.

13 (F) That procurement also benefits the regulated public utilities
14 and consumers of the state by encouraging the expansion of the
15 number of suppliers for procurements, thereby encouraging
16 competition among the suppliers and promoting economic
17 efficiency in the process.

18 (G) That the long-term economic viability of this state depends
19 substantially upon the ability of renewable energy, wireless
20 telecommunications, broadband, smart grid, and rail projects to
21 incorporate women, minority, ~~and disabled-veteran~~ *veteran, and*
22 *LGBT* businesses into those projects.

23 (2) It is the purpose of this article to do all of the following:

24 (A) Encourage greater economic opportunity for women,
25 minority, ~~and disabled-veteran~~ *veteran, and LGBT* business
26 enterprises.

27 (B) Promote competition among regulated public utility
28 suppliers in order to enhance economic efficiency in the
29 procurement of electrical, gas, water, wireless telecommunications
30 service provider, and telephone corporation contracts and contracts
31 of their commission-regulated subsidiaries and affiliates.

32 (C) Clarify and expand the program for the procurement by
33 regulated public utilities of technology, equipment, supplies,
34 services, materials, and construction work from women, minority,
35 ~~and disabled-veteran~~ *veteran, and LGBT* business enterprises.

36 SEC. 3. Section 8282 of the Public Utilities Code is amended
37 to read:

38 8282. For the purposes of this article, the following definitions
39 apply:

1 (a) “Women business enterprise” means a business enterprise
2 that is at least 51 percent owned by a woman or women; or, in the
3 case of any publicly owned business, at least 51 percent of the
4 stock of which is owned by one or more women; and whose
5 management and daily business operations are controlled by one
6 or more of those individuals.

7 (b) “Minority business enterprise” means a business enterprise
8 that is at least 51 percent owned by a minority group or groups;
9 or, in the case of any publicly owned business, at least 51 percent
10 of the stock of which is owned by one or more minority groups,
11 and whose management and daily business operations are
12 controlled by one or more of those individuals. The contracting
13 utility shall presume that minority includes Black Americans,
14 Hispanic Americans, Native Americans, and Asian Pacific
15 Americans.

16 (c) “Disabled veteran business enterprise” has the same meaning
17 as defined in ~~subdivision (g)~~ of Section 999 of the Military and
18 Veterans Code.

19 (d) *“LGBT business enterprise” means a business enterprise*
20 *that is at least 51 percent owned by a lesbian, gay, bisexual, or*
21 *transgender person or persons; or, in the case of any publicly*
22 *owned business, at least 51 percent of the stock of which is owned*
23 *by one or more lesbian, gay, bisexual, or transgender persons;*
24 *and whose management and daily business operations are*
25 *controlled by one ore more of those individuals.*

26 ~~(d)~~

27 (e) “Control” means exercising the power to make policy
28 decisions.

29 ~~(e)~~

30 (f) “Operate” means being actively involved in the day-to-day
31 management and not merely officers or directors.

32 SEC. 4. Section 8283 of the Public Utilities Code is amended
33 to read:

34 8283. (a) The commission shall require each electrical, gas,
35 water, wireless telecommunications service provider, and telephone
36 corporation with gross annual revenues exceeding twenty-five
37 million dollars (\$25,000,000) and their commission-regulated
38 subsidiaries and affiliates, to submit annually, a detailed and
39 verifiable plan for increasing procurement from women, minority,
40 ~~and disabled-veteran~~ *veteran, and LGBT business enterprises in*

1 all categories, including, but not limited to, renewable energy,
2 wireless telecommunications, broadband, smart grid, and rail
3 projects.

4 (b) These annual plans shall include short- and long-term goals
5 and timetables, but not quotas, and shall include methods for
6 encouraging both prime contractors and grantees to engage women,
7 minority,~~and disabled-veteran~~ *veteran, and LGBT* business
8 enterprises in subcontracts in all categories that provide
9 subcontracting opportunities, including, but not limited to,
10 renewable energy, wireless telecommunications, broadband, smart
11 grid, and rail projects.

12 (c) The commission shall establish guidelines for all electrical,
13 gas, water, wireless telecommunications service providers, and
14 telephone corporations with gross annual revenues exceeding
15 twenty-five million dollars (\$25,000,000) and their
16 commission-regulated subsidiaries and affiliates, to be utilized in
17 establishing programs pursuant to this article.

18 (d) Every electrical, gas, water, wireless telecommunications
19 service provider, and telephone corporation with gross annual
20 revenues exceeding twenty-five million dollars (\$25,000,000) shall
21 furnish an annual report to the commission regarding the
22 implementation of programs established pursuant to this article in
23 a form that the commission shall require, and at the time that the
24 commission shall annually designate.

25 (e) (1) The commission shall provide a report to the Legislature
26 on September 1 of each year, on the progress of activities
27 undertaken by each electrical, gas, water, wireless
28 telecommunications service provider, and telephone corporation
29 with gross annual revenues exceeding twenty-five million dollars
30 (\$25,000,000) pursuant to this article in the implementation of
31 women, minority,~~and disabled-veteran~~ *veteran, and LGBT* business
32 enterprise development programs. The report shall include
33 information about which procurements are made with women,
34 minority,~~and disabled-veteran~~ *veteran, and LGBT* business
35 enterprises with at least a majority of the enterprise's workforce
36 in California, to the extent that information is readily accessible.
37 The commission shall recommend a program for carrying out the
38 policy declared in this article, together with recommendations for
39 legislation that it deems necessary or desirable to further that

1 policy. The commission shall make the report available on its
2 Internet Web site.

3 (2) In regard to disabled veteran business enterprises, the
4 commission shall ensure that the programs and legislation
5 recommended pursuant to paragraph (1) are consistent with the
6 disabled veteran business enterprise certification eligibility
7 requirements imposed by the Department of General Services and
8 that the recommendations include only those disabled veteran
9 business enterprises certified by the Department of General
10 Services.

11 (f) (1) The Legislature declares that each electrical, gas, water,
12 mobile telephony service provider, and telephone corporation that
13 is not required to submit a plan pursuant to subdivision (a) is
14 encouraged to voluntarily adopt a plan for increasing women,
15 minority,~~and disabled~~*veteran veteran, and LGBT* business
16 enterprise procurement in all categories.

17 (2) The Legislature declares that each cable television
18 corporation and direct broadcast satellite provider is encouraged
19 to voluntarily adopt a plan for increasing women, minority,~~and~~
20 disabled~~veteran~~ *veteran, and LGBT* business enterprise
21 procurement and to voluntarily report activity in this area to the
22 Legislature on an annual basis.

23 SEC. 5. Section 8284 of the Public Utilities Code is amended
24 to read:

25 8284. (a) (1) The commission shall, by rule or order, adopt
26 criteria for verifying and determining the eligibility of ~~women and~~
27 ~~minority~~ *women, minority, and LGBT* business enterprises for
28 procurement contracts.

29 (2) The commission shall adopt the Department of General
30 Services' disabled veteran business enterprise certification
31 eligibility requirements for verifying and determining the eligibility
32 of disabled veteran business enterprises for procurement contracts,
33 and shall not deem eligible those disabled veteran business
34 enterprises that are not certified by the Department of General
35 Services.

36 (b) The commission shall develop, and require every electrical,
37 gas, water, wireless telecommunications service provider, and
38 telephone corporation with gross annual revenues exceeding
39 twenty-five million dollars (\$25,000,000) and their
40 commission-regulated subsidiaries and affiliates to implement, an

1 outreach program to inform and recruit women, minority,~~and~~
2 disabled ~~veteran~~ *veteran*, and *LGBT* business enterprises to apply
3 for procurement contracts under this article.

4 SEC. 6. Section 8285 of the Public Utilities Code is amended
5 to read:

6 8285. (a) Any person or corporation, through its directors,
7 officers, or agents, which falsely represents a business as a ~~women~~
8 ~~or minority~~ *women, minority, or LGBT* business enterprise in the
9 procurement of, or the attempt to procure, contracts from an
10 electrical, gas, water, wireless telecommunications service provider,
11 or telephone corporation with gross annual revenues exceeding
12 twenty-five million dollars (\$25,000,000), or a
13 commission-regulated subsidiary or affiliate subject to this article,
14 shall be punished by a fine of not more than five thousand dollars
15 (\$5,000), by imprisonment in a county jail for not more than one
16 year or in the state prison, or by both that fine and imprisonment.
17 In the case of a corporation, the fine or imprisonment, or both,
18 shall be imposed on every director, officer, or agent responsible
19 for the false statements.

20 (b) Any person or corporation, through its directors, officers,
21 or agents, which falsely represents a business as a disabled veteran
22 business enterprise in the procurement of, or the attempt to procure,
23 contracts from an electrical, gas, water, wireless
24 telecommunications service provider, or telephone corporation
25 with gross annual revenues exceeding twenty-five million dollars
26 (\$25,000,000), or a commission-regulated subsidiary or affiliate
27 subject to this article, shall be punished according to the penalties
28 established pursuant to subdivision (b) of Section 999.9 of the
29 Military and Veterans Code. In the case of a corporation, the fine
30 or imprisonment, or both, shall be imposed on every director,
31 officer, or agent responsible for the false statements.

32 SEC. 7. Section 8286 of the Public Utilities Code is amended
33 to read:

34 8286. (a) In order to facilitate the participation of
35 women-owned businesses, minority-owned businesses, disabled
36 veteran-owned businesses, *and LGBT-owned businesses* and small
37 businesses in contract procurement, any corporation subject to this
38 article may consider the following measures to include those
39 businesses in all phases of their contracting:

40 (1) Timely or progressive payments to those businesses.

1 (2) An amendment of the performance bond requirements so
2 that bond requirements of electrical, gas, and telephone
3 corporations do not prohibitively burden those businesses from
4 procuring the corporation's business.

5 (3) The provision of assistance to those businesses by securing
6 contract payments to those businesses with letters of credit,
7 negotiable securities, or other financing arrangements or measures.

8 (b) This section does not restrict a corporation's ability to require
9 a bond.

10 SEC. 8. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.